

Department of Homeland Security

§210.1

circumstances in the foreign state where he or she feared persecution, may also have his or her status adjusted by USCIS to that of an alien lawfully admitted for permanent residence even if he or she is no longer able to demonstrate that he or she continues to be a refugee within the meaning of section 101(a)(42) of the Act, or to be a spouse or child of such a refugee or to have been physically present in the United States for at least one year after being granted asylum, so long as he or she is able to meet the requirements noted in paragraphs (a)(1)(i), (iv), and (v) of this section.

(3) No alien arriving in or physically present in the Commonwealth of the Northern Mariana Islands may apply to adjust status under section 209(b) of the Act in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015.

[46 FR 45119, Sept. 10, 1981, as amended at 56 FR 26898, June 12, 1991; 57 FR 42883, Sept. 17, 1992; 63 FR 30109, June 3, 1998; 74 FR 55737, Oct. 28, 2009; 76 FR 53785, Aug. 29, 2011]

PART 210—SPECIAL AGRICULTURAL WORKERS

Sec.

210.1 Definition of terms used in this part.

210.2 Application for temporary resident status.

210.3 Eligibility.

210.4 Status and benefits.

210.5 Adjustment to permanent resident status.

AUTHORITY: 8 U.S.C. 1103, 1160, 8 CFR part 2.

SOURCE: 53 FR 10064, Mar. 29, 1988, unless otherwise noted.

§210.1 Definition of terms used in this part.

(a) *Act*. The Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986.

(b) *ADIT*. *Alien Documentation, Identification and Telecommunications card, Form I-89*. Used to collect key data concerning an alien. When processed together with an alien's photographs, fingerprints and signature, this form becomes the source document for generation of Form I-551, Permanent Resident Card.

(c) *Application period*. The 18-month period during which an application for adjustment of status to that of a temporary resident may be accepted, begins on June 1, 1987, and ends on November 30, 1988.

(d) *Complete application*. A complete application consists of an executed Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker, evidence of qualifying agricultural employment and residence, a report of medical examination, and the prescribed number of photographs. An application is not complete until the required fee has been paid and recorded.

(e) *Determination process*. Determination process as used in this part means reviewing and evaluating all information provided pursuant to an application for the benefit sought and making a determination thereon. If fraud, willful misrepresentation of a material fact, a false writing or document, or any other activity prohibited by section 210(b)(7) of the Act is discovered during the determination process the Service shall refer the case to a U.S. Attorney for possible prosecution.

(f) *Family unity*. The term *family unity* as used in section 210(c)(2)(B)(i) of the Act means maintaining the family group without deviation or change. The family group shall include the spouse, unmarried minor children who are not members of some other household, and parents who reside regularly in the household of the family group.

(g) *Group 1*. Special agricultural workers who have performed qualifying agricultural employment in the United States for at least 90 man-days in the aggregate in each of the twelve-month periods ending on May 1, 1984, 1985, and 1986, and who have resided in the United States for six months in the aggregate in each of those twelve-month periods.

(h) *Group 2*. Special agricultural workers who during the twelve-month period ending on May 1, 1986 have performed at least 90 man-days in the aggregate of qualifying agricultural employment in the United States.

(i) *Legalization Office*. Legalization offices are local offices of the Immigration and Naturalization Service which

§210.1

8 CFR Ch. I (1–12 Edition)

accept and process applications for legalization or special agricultural worker status, under the authority of the district directors in whose districts such offices are located.

(j) *Man-day*. The term *man-day* means the performance during any day of not less than one hour of qualifying agricultural employment for wages paid. If employment records relating to an alien applicant show only piece rate units completed, then any day in which piece rate work was performed shall be counted as a man-day. Work for more than one employer in a single day shall be counted as no more than one man-day for the purposes of this part.

(k) *Nonfrivolous application*. A complete application will be determined to be nonfrivolous at the time the applicant appears for an interview at a legalization or overseas processing office if it contains:

(1) Evidence or information which shows on its face that the applicant is admissible to the United States or, if inadmissible, that the applicable grounds of excludability may be waived under the provisions of section 210(c)(2)(i) of the Act,

(2) Evidence or information which shows on its face that the applicant performed at least 90 man-days of qualifying employment in seasonal agricultural services during the twelve-month period from May 1, 1985 through May 1, 1986, and

(3) Documentation which establishes a reasonable inference of the performance of the seasonal agricultural services claimed by the applicant.

(l) *Overseas processing office*. Overseas processing offices are offices outside the United States at which applications for adjustment to temporary resident status as a special agricultural worker are received, processed, referred to the Service for adjudication or denied. The Secretary of State has designated for this purpose the United States Embassy at Mexico City, and in all other countries the immigrant visa issuing office at which the alien, if an applicant for an immigrant visa, would make such application. Consular officers assigned to such offices are authorized to recommend approval of an application for special agricultural worker status to the Service if the

alien establishes eligibility for approval and to deny such an application if the alien fails to establish eligibility for approval or is found to have committed fraud or misrepresented facts in the application process.

(m) *Preliminary application*. A preliminary application is defined as a fully completed and signed application with fee and photographs which contains specific information concerning the performance of qualifying employment in the United States, and identifies documentary evidence which the applicant intends to submit as proof of such employment. The applicant must be otherwise admissible to the United States and must establish to the satisfaction of the examining officer during an interview that his or her claim to eligibility for special agriculture worker status is credible.

(n) *Public cash assistance*. Public cash assistance means income or needs-based monetary assistance. This includes but is not limited to supplemental security income received by the alien or his immediate family members through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work-related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(o) *Qualified designated entity*. A qualified designated entity is any state, local, church, community, or voluntary agency, farm labor organization, association of agricultural employers or individual designated by the Service to assist aliens in the preparation of applications for Legalization and/or Special Agricultural Worker status.

(p) *Qualifying agricultural employment*. Qualifying agricultural employment means the performance of “seasonal agricultural services” described at section 210(h) of the Act as that term is defined in regulations by the Secretary of Agriculture at 7 CFR part 1d.

Department of Homeland Security

§210.2

(q) *Regional processing facility.* Regional Processing Facilities are Service offices established in each of the four Service regions to adjudicate, under the authority of the Directors of the Regional Processing Facilities, applications for adjustment of status under sections 210 and 245a of the Act.

(r) *Service.* The Immigration and Naturalization Service (INS).

(s) *Special agricultural worker.* Any individual granted temporary resident status in the Group 1 or Group 2 classification or permanent resident status under section 210(a) of the Act.

[53 FR 10064, Mar. 29, 1988, as amended at 54 FR 50339, Dec. 6, 1989; 63 FR 70315, Dec. 21, 1998]

§210.2 Application for temporary resident status.

(a)(1) *Application for temporary resident status.* An alien agricultural worker who believes that he or she is eligible for adjustment of status under the provisions of §210.3 of this part may file an application for such adjustment at a qualified designated entity, at a legalization office, or at an overseas processing office outside the United States. Such application must be filed within the application period.

(2) *Application for Group 1 status.* An alien who believes that he or she qualifies for Group 1 status as defined in §210.1(f) of this part and who desires to apply for that classification must so endorse his or her application at the time of filing. Applications not so endorsed will be regarded as applications for Group 2 status as defined in §210.1(g) of this part.

(3) *Numerical limitations.* The numerical limitations of sections 201 and 202 of the Act do not apply to the adjustment of aliens to lawful temporary or permanent resident status under section 210 of the Act. No more than 350,000 aliens may be granted temporary resident status in the Group 1 classification. If more than 350,000 aliens are determined to be eligible for Group 1 classification, the first 350,000 applicants (in chronological order by date the application is filed at a legalization or overseas processing office) whose applications are approved for Group 1 status shall be accorded that classification. Aliens admitted to the

United States under the transitional admission standard placed in effect between July 1, 1987, and November 1, 1987, and under the preliminary application standard at §210.2(c)(4) who claim eligibility for Group 1 classification shall be registered as applicants for that classification on the date of submission to a legalization office of a complete application as defined in §210.1(c) of this part. Other applicants who may be eligible for Group 1 classification shall be classified as Group 2 aliens. There is no limitation on the number of aliens whose resident status may be adjusted from temporary to permanent in Group 2 classification.

(b) *Filing date of application—(1) General.* The date the alien submits an application to a qualified designated entity, legalization office or overseas processing office shall be considered the filing date of the application, provided that in the case of an application filed at a qualified designated entity the alien has consented to have the entity forward the application to a legalization office. Qualified designated entities are required to forward completed applications to the appropriate legalization office within 60 days after the applicant gives consent for such forwarding.

(2) [Reserved]

(c) *Filing of application—(1) General.* The application must be filed on Form I-700 at a qualified designated entity, at a legalization office, at a designated port of entry, or at an overseas processing office within the eighteen-month period beginning on June 1, 1987 and ending on November 30, 1988.

(2) *Applications in the United States.* (i) The application must be filed on Form I-700 with the required fee and, if the applicant is 14 years or older, the application must be accompanied by a completed Form FD-258 (Fingerprint Card).

(ii) All fees for applications filed in the United States, other than those within the provisions of §210.2(c)(4), must be submitted in the exact amount in the form of a money order, cashier's check, or bank check made payable to the Immigration and Naturalization Service. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.